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OCT 07 2003

STATE OF NEW HAMPSHIRE
WATER COUNCIL

Appeal of Conservation Law Foundation
In Re: Section 401 Water Quality Certificate No. 2003-001
(Proposed Falls Way Subdivision: September Drive and Breakfast Hill Road)

Docket No. 03-10 WC

MOTION TO STAY

NOW COMES the Conservation Law Foundation ("CLF"), by and through its attorney, Thomas F. Irwin, and respectfully states as follows:

1. On August 18, 2003, the Conservation Law Foundation ("CLF") filed a Petition appealing Water Quality Certificate No. 2003-001, relative to a 79-lot residential subdivision in Greenland, New Hampshire, proposed by Endicott General Partnership ("the proposed project").
2. On September 17, 2003, the DES Wetlands Bureau issued a decision reconsidering its prior granting of a wetlands permit for the proposed project, and denying a permit for the proposed project.
3. Absent a wetlands permit, and unless Endicott General Partnership can succeed in overturning the permit denial (which could involve a lengthy appeals process), the proposed project cannot be constructed, rendering CLF's appeal of Water Quality Certificate No. 2003-001 unnecessary.
4. In the interest of administrative and judicial economy, and to avoid litigation which may prove unnecessary given the status of the wetlands permit for the proposed project, CLF's appeal of 401 Water Quality Certificate No. 2003-001 should be stayed.
5. CLF does not in any way waive any of the issues and arguments raised in its appeal. The intended purpose of this motion is to stay the action, retaining all issues and arguments, and to allow CLF to pursue this appeal should Endicott receive a state wetlands permit for the proposed project.

WHEREFORE, the Conservation Law Foundation respectfully requests that the Water Council:

- A. Stay this action until such time as it becomes legally relevant; and
- B. Grant such other relief as it deems appropriate and just.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

By: 

Thomas F. Irwin
Conservation Law Foundation
27 North Main Street
Concord, NH 03301
603/225-3060

Date: October 7, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has this day been sent *via* first-class U.S. Mail, postage prepaid, to DES Commissioner Michael Nolin, Water Division Director Harry T. Stewart, Malcolm R. McNeill, Jr., Esq., and Jennifer L. Patterson, Esq.


Thomas F. Irwin